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**Final Statement of the Korean NCP**

**for the OECD Guidelines for Multinational Enterprises**

**Complaint from the Workers’ Union of Corning Inc. & Corning Inc.**

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| **August 16, 2018** |

**1. Introduction**

The OECD Guidelines for Multinational Enterprises (hereinafter “the Guidelines”) are a set of recommendations aimed at minimizing adverse impacts from the activities of multinational enterprises and strengthening their responsible business conducts.

To ensure the effectiveness of the Guidelines, the government of Republic of Korea established the Korean National Contact Point (KNCP) in 2001 to promote the Guidelines and deal with issues concerning their implementation in specific instances.

**2. Substance of the Specific Instance**

On August 17, 2017, the Workers’ Union of Corning Inc. (hereinafter “the Union” or “Complainant”) submitted a Specific Instance with the KNCP, alleging that Corning Inc. (hereinafter “Corning” or “Respondents”) acted inconsistently with the Guidelines.

On September 30, 2017, Complainant submitted an additional written opinion, and Respondents submitted responses accordingly to the KNCP on September 8, 2017 and October 17, 2017 respectively.

Complainant primarily alleged that the Respondent did not “observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country” by failing to provide a time and place for bargaining (violation of Guideline V. 4. a).

**3. Proceedings of the NCP**

The Guidelines state *“In making an initial assessment of whether the issue raised merits further examination, the NCP will need to determine whether the issue is bona fide and relevant to the implementation of the Guidelines. In this context, the NCP will take into account:*

* *The identity of the party concerned and its interest in the matter.*
* *Whether the issue is material and substantiated.*
* *Whether there seems to be a link between the enterprise’s activities and the issue raised in the specific instance*
* *The relevance of applicable law and procedures, including court rulings*
* *How similar issues have been, or are being treated in other domestic or international proceedings.*
* *Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.”*

To consider these factors at the initial assessment, the KNCP held meetings with Respondents, Complainant, on November 7, 2017.

On November 13, 2017, the KNCP made an initial assessment as stated below and informed both parties on November 15, 2017.

* Each party requested opportunities to have a meaningful and constructive dialogue during the meetings held in November 2017. In the initial assessment, the KNCP found that this case merited further consideration.
* An initial assessment only determines whether the issues raised merit further examination or whether the NCP can contribute to the resolution of the issues by offering its good offices. Therefore, the decision for further examination does not necessarily mean that the KNCP considers Respondents have acted inconsistently with the Guidelines.

The Implementation Procedures of the Guidelines state, *“If the issues raised merit further consideration, the NCP will discuss the issue further with the parties involved and offer its good offices in an effort to contribute informally to the resolution of issues.”*

In line with the Implementation Procedure, the KNCP offered its good offices on March 28, April 5 and April 13, 2018 but they were not held due to circumstances such as request for a delay from both Parties.

The KNCP organized a Mediation Committee, provided its good offices to the parties in an effort to contribute to the resolution of the issues, and requested the parties' voluntary and active participation in the mediation procedure.

The Mediation Committee consisted of three members, one from among the KNCP commissioners and two experts from relevant fields. The chairman of the KNCP appointed Mr. Sang-Hee Lee (Korea Polytechnic University) to serve as the chairman of the Mediation Committee. Mr. Sang-Tae Yeo (Head of Secretariat, Youth Hope Foundation) and Mr. Jong-Bok Park (Lawyer) were appointed as the other two members of the Mediation Committee.

On May 14, 2018, the Mediation committee and both parties held a meeting at the Korean Commercial Arbitration Board (Secretariat of the KNCP). Representing Complainant, a chairperson of the Union attended the meeting. Representing Respondents, two staff members of Corning Inc. participated in the meeting. The chairman of the Mediation Committee noted that the mediation was based on voluntary participation and clarified that the mediation process may be terminated if the Committee’s neutrality was in question (i.e. offering a unilateral concession to one party) or if either party deemed the mediation as unnecessary. During the meeting the Parties identified the issues at hand such as the deduction of union dues, the retroactive application of wage increases, the Time-off system and space for a union office. Throughout the meeting, both parties demonstrated mutual trust and recognized the need to continue the mediation process.

On July 4, 2018, three participants from each Party attended a meeting at the Korean Commercial Arbitration Board. Reviewing the progress made since the previous meeting, the Parties confirmed that there had been voluntary dialogues between them. While they found common ground on the deduction of union dues, the Time-off system and space for a union office, some fine-tuning was required for their implementation. Meanwhile, the issue regarding the retroactive application of wage increases was still under negotiation.

On July 17, 2018, the Mediation Committee and both parties participated in a meeting held at the Korean Commercial Arbitration Board. The Mediation Committee tried to make progress by holding an individual meeting with each Party and offering its advice. Taking into account the recommendations from the Mediation Committee, the Parties continued to engage in dialogue and negotiations, and thereby reached a substantial agreement on the issues raised – the deduction of union dues, the retroactive application of wage increases, the Time-off system and space for a union office.

The Parties agreed to accept the recommendations made by the Mediation Committee on July 20, 2018.

**4. Conclusion**

The grievance mechanism in the Implementation Procedures of the Guidelines is based on the voluntary participation of multinational enterprises and stakeholders. The Implementation Procedures of the Guidelines state, *“As part of making available good offices, and where relevant to the issues at hand, NCPs will offer or facilitate access to consensual and non-adversarial procedures, such as conciliation or mediation, to assist in dealing with the issues at hand. In common with accepted practices on conciliation and mediation procedures, these procedures would be used only upon agreement of the parties concerned and their commitment to participate in good faith during the procedure.”*

In its initial assessment the KNCP determined that this specific instance merit further examination, thereby launching the mediation process. The Mediation Committee encouraged the Parties to continue engaging in dialogue and negotiations throughout the three mediation meetings which led to a consensual resolution on the key issues.

Following the mediation process facilitated by the KNCP the Parties resumed their own dialogue after a one-year stalemate and arrived at a resolution on their own. This is the first case where a specific instance submitted by the Union ended in a mutual agreement reached through the mediation provided by the KNCP, which sets a good example for the Guidelines and the NCP.

Korean National Contact Point

for the OECD Guidelines for Multinational Enterprises